UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------------------------------------------------------------- X
                                                                 :
PATRICK LEDGER,                                                  :        09-CV-2227 (ARR) (LB)
                                                                 :
                        Petitioner,                              :        NOT FOR PRINT OR
                                                                 :        ELECTRONIC
            -against-                                            :        PUBLICATION
                                                                 :
CITY OF NEW YORK, NEW YORK CITY POLICE                           :        MEMORANDUM AND
DEPARTEMENT, POLICE OFFICER JOHN DOE #1,                         :        ORDER
POLICE OFFICER JOHN DOE #2, POLICE OFFICER                       :
JANE DOE #1, POLICE OFFICER JANE DOE #2,                         :
Individual and Official Capacity,                                :
                                                                 :
                        Defendants.                              :
---------------------------------------------------------------- X

ROSS, United States District Judge:

Plaintiff Patrick Ledger, pro se, brings this action against the City of New York, its police

department, and several of its police officers, alleging that officers used excessive force against

him and asserting claims pursuant to 28 U.S.C. § 1983 and New York law. In December 2010,

defendants brought a motion for summary judgment. Plaintiff has sought and received three

extensions of time in which to file his opposition to defendants' motion. See Dkt. Nos. 51-53, 55

61, 62, 64. In granting the latest extension, until April 13, 2011, the court underscored that it

was the final extension that the court would grant. Dkt. No. 64.

By letter motion dated January 27, 2011, plaintiff applied to the court for the appointment

of counsel to represent him in this action. Dkt. No. 54. On February 14, 2011, by hand

endorsement, the court denied plaintiff's motion at that time. Dkt. No. 61. Now before the court

is plaintiff's motion for reconsideration of his application for the appointment of counsel. Dkt.

No. 65. On March 13, 2011 the court referred plaintiff's motion for reconsideration to the
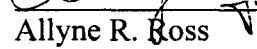
1

Honorable Lois Bloom, United States Magistrate Judge. Dkt. No. 66. The court now vacates

that referral and, for the reasons explained below, denies plaintiff's motion for reconsideration.

Civil litigants, unlike criminal defendants, do not have a constitutional right to the

appointment of counsel. However, under 28 U.S.C. § 1915(e)(1), "[t]he court may request an

attorney to represent any person unable to afford counsel." In ruling on a motion for

appointment of counsel, the court's first inquiry is whether plaintiff can afford to obtain counsel.

See Terminate Control Corp. v. Horowitz, 28 F.3d 1335, 1341 (2d Cir. 1994). If the court finds

that a plaintiff cannot afford counsel, it must then examine the merits of the case and determine

whether the indigent's position "seems likely to be of substance." Hodge v. Police Officers, 802

F.2d 58, 61 (2d Cir. 1986); Ferrelli v. River Manor Health Care Ctr., 323 F.3d 196, 203-05 (2d

Cir. 2004). After the two threshold determinations have been made as to indigence and merit,

the court has discretion to consider the following factors: (1) the indigent's ability to investigate

the crucial facts; (2) whether conflicting evidence implicating the need for cross-examination

will be the major proof presented to the fact finder; (3) the indigent's ability to present the case;

(4) the complexity of the legal issues involved; and (5) any special reason in that case why

appointment of counsel would be more likely to lead to a just determination. Id. at 61-62.

The record before the court does not warrant appointment of counsel because it is unclear

whether plaintiff's claims have merit. After the court reviews plaintiff's response to defendants'

motion, the court will decide whether plaintiff has made an adequate showing that appointment

of counsel is warranted in this matter. In light of the pendency of this motion for

reconsideration, the court hereby extends plaintiff's time to file his opposition by an additional

seven days to April 20, 2011. Therefore, defendants' reply, if any, shall be filed by April 27,

2011. No further extensions will be given.

SO ORDERED.

/Signed by Judge Ross/

_____

Allyne R. Ross
United States District Judge

Dated:      March 30, 2011
                Brooklyn, New York

**<u>Service List</u>**

<u>Pro Se Plaintiff</u>:
# 08-A-3404
Elmira Correctional Facility
1879 Davis Street
P.O. Box 500
Elmira, NY 14902-0500